

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

JONATHAN ORTIZ-MUÑOZ,

Petitioner

v.

UNITED STATES OF AMERICA

Respondent

Civil Case No. 12-1575 (PG)

ORDER

Defendant Jonathan Ortiz-Muñoz (the "Petitioner") filed a pro se Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255. See Docket No. 1. He claimed that the court lacked jurisdiction to impose the sentence against him; that the sentence "violated the laws or the Constitution of the United States" and that it was larger than that maximum allowed by law and subject to collateral attack. See Docket No. 1-1.

The Government filed its response on October 29, 2012. See Docket No. 8. In short, it averred that Petitioner's motion lacked merit and should be denied without a hearing because it was "unspecific, conclusory and overly speculative." Id.

On April 9, 2013, the petitioner filed an "Amended Supplemental Motion to Vacate" without prior leave of Court. See Docket No. 13. The motion advanced a claim of ineffective assistance of counsel pursuant to Strickland v. Washington, 466 U.S. 668 (1984). See Docket No. 13-1.

As per this court's request, on February 4, 2015, Magistrate-Judge Justo Arenas entered a Report and Recommendation ("Report" or "R&R") recommending that the Motion to Vacate be denied without evidentiary hearing and warning the parties that they had fourteen (14) days to file any objections to the R&R. See Docket No. 16.

Pursuant to 28 U.S.C. §§ 636(b)(1)(B), FED.R.CIV.P. 72(b), and Local Rule 72(d), a District Court may refer dispositive motions to a Magistrate Judge for a Report and Recommendation. See Alamo Rodriguez v. Pfizer Pharmaceuticals, Inc., 286 F.Supp.2d 144, 146 (D.P.R. 2003). The adversely affected party may "object the magistrate judge's report of proposed findings and recommendations pursuant to 28 U.S.C. § 636(b)(1)

within fourteen (14) days after being served a copy of it." Local Rule 72(d).

If objections are timely filed, the District Judge shall "make a *de novo* determination of those portions of the report or specified findings or recommendations to which [an] objection is made." Felix Rivera de Leon v. Maxon Engineering Services, Inc., 283 F.Supp.2d 550, 555 (D.P.R. 2003). The Court can "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate," however, if the affected party fails to timely file objections, "the district court can assume that they have agreed to the magistrate's recommendation." Alamo Rodriguez, 286 F.Supp.2d at 146 (citation omitted).

Petitioner did not file objections to the Report, and the time allotted for doing so has already expired. Taking that fact into consideration and having thoroughly reviewed the R&R, we find no fault with Magistrate Judge Arenas' assessment. Even under the more lenient review afforded to the allegations of pro se litigants, see e.g. Erickson v. Pardus, 551 U.S. 89, 94 (2007), Petitioner's claims do not pass muster. The Court thus **APPROVES** and **ADOPTS** the Magistrate's Report and Recommendation as its own. Consequently, petitioner's motions are **DENIED** and the above-captioned action will be **DISMISSED WITH PREJUDICE**. Judgment shall be entered accordingly.

IT IS SO ORDERED.

In San Juan, Puerto Rico, March 13, 2015.

S/ JUAN M. PÉREZ-GIMÉNEZ
JUAN M. PÉREZ-GIMÉNEZ
SENIOR U.S. DISTRICT JUDGE